IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14699 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRADIP @ KISHANBHAI @ KANAIYO UMIYASHANKAR GOR BRAHMAN

Versus

DIST. MEGISTRATE

Appearance:

1. Special Civil Application No. 14699 of 2004

MR PM DAVE for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by District Magistrate, Godhra, on 04th of August, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 05th of August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two criminal cases registered against the petitioner under the Bombay Prohibition Act, both before the Prohibition Police Station, Godhra, on 4th of March, 2004 and 10th of April, 2004. Both the cases are pending and the petitioner is on bail in both the cases. It is alleged that in the first case the petitioner was found in possession of 375 bottles of beer while in the second case he was found in possession of 668 bottles of beer. The detaining authority thoroughly examined the investigation papers in both the above crimes registered against the petitioner and came to the conclusion that the petitioner was dealing in storing, selling and transporting the prohibited liquor. In addition to this, the detaining authority also relied upon three in-camera statements recorded by sponsoring authority on 21st of June, 2004, 22nd of June, 2004 and 23rd of June, 2004, as verified by the detaining authority on 27th of July, 2004 and 31st of July, 2004. First statement revealed an incident wherein the witness was forced by the detenu to accompany him in a car to Rajasthan for taking illegal liquor. On refusing, witness was beaten. The crowd was gathered. The detenu took out a knife from his pocket and threatened that if the witness any time provided this information to the police, he would be done to death. Witness was frightened and on promise to keep his identity undisclosed, he offered his statement. While the second statement revealed an incident occurred in the month before recording of the statement where petitioner and his accomplices approached witness in an autorickshaw, dragged the witness and made him to sit in the rickshaw. He was taken to highway on constant threat of injury by knife and was informed that the witness provided information to the Police, in the result, the quantity of liquor of the petitioner was seized by the Police. The witness was thrown out of the rickshaw. He was beaten. Crowd was gathered and the petitioner attempted to threaten the crowd with gupti. Therefore, the crowd was dispersed. The traffic around the area was disrupted. The petitioner threatened the witness that if the witness any time made a complaint against the petitioner, he would be done to death. While in third

statement, the witness referred an incident occurred before seven days of the recording of the statement by the sponsoring authority where the witness was asked by the petitioner to keep a bulk of foreign liquor in the house of witness, which was situated in aloofness. When witness denied, the petitioner got excited and called his accomplices sit in the car and the witness was beaten. The traffic around the area was jammed. Passersby gathered there but the petitioner and his accomplices rushed towards the crowd, so the crowd dispersed. The witness was threatened not to complaint before the police, otherwise he would be done to death.

3. On this material, the detaining authority came to the conclusion that the petitioner was headstrong person and was possessing ferocious tendencies and was picking up quarrels with innocent citizens. In view of the detaining authority, the petitioner was bootlegger and his activities were prejudicial to the maintenance of public order and adversely affecting the public health. The detaining authority also came to the conclusion that the bootlegging activities of the petitioner were required to be prevented forthwith. After considering other remedies available against the petitioner under general law, the detaining authority came to the conclusion that there was no other alternative except to pass the order of detention of the petitioner under the PASA Act to prevent his bootlegging activities forthwith. Therefore, the detaining authority passed the order of detention of the petitioner which is under challenge in this petition.

4. Learned Advocate Mr. P.M. Dave for the petitioner and learned AGP Mr. H.M. Prachchhak for the respondents were heard at length.

5. Out of various grounds urged on behalf of the petitioner and controverted and opposed by learned AGP, it appears that this petition can be examined and disposed of only on the sole issue that whether there was credible material placed before the detaining authority to come to the conclusion that by the activities of the petitioner the public order was disturbed and public health was adversely affected.

6. To reach to the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible and cogent material that the activities of the petitioner directly or indirectly were causing or were likely to cause any

harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority must draw a clear line between the cases falling within breach of law and order and breach of public order.

7. In the present case, the detaining authority has relied upon two types of material to reach to the subjective satisfaction that the activities of the petitioner were prejudicial to the maintenance of public order and adversely affecting the public health. Referring to the two cases under the Prohibition Act filed against the petitioner for the possession of foreign liquor and going through the investigating papers, it clearly appears that those cases came to be filed against the petitioner because he was found in possession of some prohibited foreign liquor in breach of the Bombay Prohibition Act. Those cases are pending and the petitioner shall be tried and may be punished if found guilty. Nothing so far is revealed through the investigating papers relied upon by the detaining authority that by filing of those cases, such activities of the petitioner were disclosed as to disturb maintenance of public order or adversely affecting public health. At the most, these cases may be considered to be breach of law, for which, as aforesaid, the petitioner may be dealt with according to law. The act constituting criminal offences registered against the petitioner in dealing with foreign liquor have no bearing at all on the question of maintenance of public order. The second type of material which the detaining authority relied upon is in the form of three in-camera statements. While going through those statements and taking them on their face value, it is clear that the fall out, reach and impact of the activities of the petitioner were not capable of disturbing the public order. The incidents referred in three in-camera statements appear to be more individual disputes than to involve society at large or disturbing the even tempo of the life of the community. The potentiality of the acts alleged in in-camera statements, from the bare reading therefore do not disclose capability to disturb the even tempo of the life of the community or society at large or section of the society. No widespread danger to society could be inferred from the statements of the witnesses and, therefore, those unreported incidents are also may be affecting breach of law and order but cannot be branded to be the activities prejudicial to the maintenance of public order and affecting adversely the public health.

8. In the matter of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Ors., reported in 2000 (1) G.L.H. 393, wherein after considering many decisions of the Apex Court, the Division Bench of this Court has observed in paragraphs No.21 and 22 as under.

> "21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.
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> Again, in Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police and others, 1995 (2) GLR 1268 (SC), the Supreme Court considered the relevant decisions on point including the decision in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases.
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> 22. So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs."

9. Having regard to the facts of the present case, the principles laid down in the above mentioned decision of Ashok Jivraj (supra), are squarely applicable to the facts of the present case. Therefore, the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

10. In the result, the petition is allowed. The order passed by the District Magistrate, Godhra on 4th of August, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner - Pradip Kishanbhai @ Kanaiyo Umiyashankar Gor Brahman is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

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